

C O P Y

State of New Hampshire
OFFICE OF ATTORNEY-GENERAL

NEW HAMPSHIRE LAW LIBRARY

SEP 03 1998

CONCORD, N.H.

1952

Jan. 9

His Excellency, Governor Sherman Adams
Concord, New Hampshire

b My dear Governor:

You have requested an interpretation of Revised Laws, chapter 38-A, the Presidential Preference Primary Law, as inserted by Laws of 1949, chapter 186, with regard to the situation which would arise in the event that petitions for entering the name of a particular person on the ballot as a candidate for president should be filed by voters of both major political parties. Section 3 of that chapter provides, " the petitions shall contain an affirmation under the penalties for perjury that each signer is a member of the same political party as the proposed candidate." The question arises in connection with the consideration reported in the press to have been given by certain members of the Democratic Party to the possibility of filing petitions for entering upon the ballot of that party the name of General Eisenhower as a candidate for the office of President.

Our statutes indicate the test of membership in a political party to be the intention to affiliate with and generally support the candidates of that party, and that for such membership party registration is not indispensable. Revised Laws chapter 33, sections 15 - 20, 38, 39, 43, 44. In New York, the State in which is believed to be located the voting residence of General Eisenhower, it has been held that a condition of membership in a political party is sympathy with its principles and the purpose of fostering and effectuating them.

On Monday, January 7, 1952, the press reported a statement by Senator Henry Cabot Lodge, Jr., that General Eisenhower had told him his voting record was that of a Republican and that his political convictions coincided with enlightened Republican doctrine. On the same day, the press reported General Eisenhower's comment upon the statement of Senator Lodge to have been, "Senator Lodge's announcement of yesterday as reported in the press given an accurate account of the general tenor of my political convictions and of my Republican voting record."

His Excellency, Governor Sherman Adams

-2-

The statement of the General indicates his sympathy with the principles of the Republican Party, his purpose to foster and effectuate them, and his intention to affiliate with that party and generally to support its candidates. The statement appears therefore to signify his membership in the Republican Party, within the definitions given.

The statement likewise appears to remove any reasonable ground for believing the general to be a member of the Democratic Party. If any Democrat should choose, however, to petition for the printing of the name of General Eisenhower as a candidate on the ballot of the Democratic Party, affirming under the penalties of perjury that he is a member of the same political party as the General, there would be nothing to prevent his doing so except the risk he would incur of being prosecuted on a charge of perjury, complaint for which could be made by any person cognizant of the facts.

Section 3 of chapter 38-A provides that the decision of the secretary of state as to the regularity of petitions shall be final. This clause does not suggest that the secretary of state is charged with responsibility for determining whether the proposed candidate is or is not a member of the same political party as the several petitioners, and it is my opinion that the secretary of state is to be concerned only with the regularity of the petitions as to form, execution, and numerical adequacy. The statute does not provide for the filing of objections with the secretary of state nor for reference to the ballot law commission of any question of validity of the petitions. Chapter 34-A as inserted by Laws of 1947, chapter 211 has not been amended to extend jurisdiction of that commission to questions arising under provisions of chapter 38-A.

The Presidential Preference Primary Act clearly contemplates, however, that the name of a particular candidate shall appear only on the ballot of his party, apparently meaning one party, not two. In the event that any one individual should be named as a proposed candidate in the petitions of members of both parties, he of course will have an opportunity to have his name withdrawn from the ballot of either or both parties under the provisions of section 4.

C O P Y

His Excellency, Governor Sherman Adams

-2-

As to what other procedure is available to resolve problems which might arise from the filing of petitions by members of both parties for the proposed candidacy of the same person, no opinion is expressed.

Respectfully yours,

Maurice M. Blodgett
Deputy Attorney General

MB/T